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Chairperson: Mr. Al Bayati ..... (Iraq)

Contents

Agenda item 75: Report of the International Law Commission on the work of its sixtieth session (*continued*)

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The meeting was called to order at 10.10 a.m.

Agenda item 75: Report of the International Law Commission on the work of its sixtieth session (*continued*) (A/63/10)

1. **Mr. Murai** (Japan) welcomed the Commission's adoption of the draft articles on the law of transboundary aquifers. As the draft articles had been developed with support from experts mobilized by the United Nations Educational, Scientific and Cultural Organization (UNESCO) through its International Hydrological Programme, his delegation believed that they had a solid political and scientific foundation. The collaboration with UNESCO should serve as a model for the Commission's future work on interdisciplinary topics, which could not be dealt with solely by specialists in international public law. His delegation supported the two-step approach recommended by the Commission, in which the General Assembly would first take note of the draft articles and recommend that States should make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers on the basis of the principles enunciated in the articles and then, at a later stage, would consider the elaboration of a convention on the basis of the draft articles. He sincerely hoped that the Assembly would adopt a resolution along the lines proposed in paragraph 49 of the Commission's report (A/63/10).

2. Recalling that in 2007 the Commission had asked to be provided with relevant State practice, particularly treaties and other arrangements, concerning oil and natural gas, he said that it would be premature for the Commission to embark upon the codification of the law on that subject before it received replies from a sufficient number of Governments, although it might continue to conduct preliminary studies.

3. **Mr. Hernández García** (Mexico) said that the meeting with legal advisers held in conjunction with the commemoration of the Commission's sixtieth anniversary had provided an enormously useful opportunity for a free exchange of views regarding the Commission's methods of work. His delegation endorsed the Commission's recommendation that such meetings should be held at least once each quinquennium. Other opportunities for dialogue between Commission members and delegations might also be explored — for example, the organization of meetings on specific topics during the Commission's regular sessions.

4. Turning to the draft articles on the law of transboundary aquifers, he observed that the development of standards that established the limits of States' sovereignty with respect to the use of transboundary natural resources was essential in order to avoid domestic and international conflicts. He expressed support for the expression "equitable and reasonable utilization" in draft article 4, as it recognized the non-renewable nature of many transboundary water resources and set limits on their use. While the ideal of sustainable use might be envisaged for rechargeable aquifers, in the case of non-rechargeable aquifers, a general plan for optimum use of the resource based on the criteria laid out in draft article 5 was needed. His delegation also welcomed the flexibility inherent in the definition of the term "utilization" in draft article 2, which left open the possibility that the principles contained in the draft articles might apply to uses other than the extraction of water.

5. It was important to note that the mechanisms for cooperation and exchange of information called for in part 3 of the draft articles were without prejudice to the sovereignty of States over natural resources located within their territory, recognized in draft article 3, or to their right to protect their national security, as provided in draft article 19. His delegation believed that the draft articles struck a good balance between vital human needs, the interests of States and preservation of the shared environment. It also believed that the sharing of information and consultation among States on the use of shared natural resources would lead to better conservation and development policies.

6. He acknowledged the importance of the general obligation set forth in draft article 12 with regard to prevention, reduction and control of pollution of transboundary aquifers; however, in his Government's view, the extension to non-aquifer States of the obligation to cooperate in the protection of aquifer recharge and discharge zones was rooted in the principle of *sic utere tuo ut alienum non laedas*. It was an obligation independent of the standard codified in the draft articles, and compliance with that obligation should be considered independently of the treaty obligations arising from any instrument eventually established on the basis of the draft articles.

7. His delegation concurred with the views expressed by the delegations of Germany, Norway and the United Kingdom with regard to the Commission's consideration of the matter of shared oil and gas resources: given the economic and commercial nature of the exploitation of those resources, they had to be dealt with differently from aquifers. Nevertheless, it would be useful to States for the Commission to examine the matter in greater detail with a view to identifying common elements governing State practice. For example, in the light of the emerging obligation under international law to enter into unitization agreements for the development of such resources, it would be helpful to identify the elements that such agreements should have in order to foster efficient and equitable use of the resources.

8. Mexico supported the two-step approach proposed by the Commission with regard to the action to be taken by the General Assembly on the draft articles on the law of transboundary aquifers.

9. **Ms. Kamal** (Malaysia), referring to the draft articles on the law of transboundary aquifers, noted that the Commission had omitted draft article 20, on the relationship of the draft to other conventions and international agreements. She agreed with the omission, because that article would have been linked to the question of the final form of the draft, a matter of policy which should be left to States. Important though the topic was in view of the global water crisis, the aim of a legally binding convention would not be achievable in the short term without consensus among States. As they stood at present, the draft articles would be useful as guidelines for States to enter into bilateral or regional arrangements for the proper management of their transboundary aquifers, as recommended by the Commission.

10. The draft articles on effects of armed conflicts on treaties would provide useful guidance to States in handling their treaty relations in the event of armed conflict and would provide a degree of certainty in the absence of any express statement of intention in particular treaties. Some of the draft articles, such as the list of categories of treaties to be included as an annex, would benefit from further study and deliberation. She welcomed the Commission's pragmatic approach in draft article 1, which would extend the scope of the draft to treaties being provisionally applied. She also favoured the inclusion, in the scope of the definition in draft article 2, of non-international armed conflicts and military occupation, both of which had a potentially disruptive effect on treaties. In draft article 3, the word "necessarily" had been included for practical reasons. Draft article 8 had been redrafted to reflect article 65 of the Vienna Convention on the Law of Treaties, and it now filled the gaps previously identified in the notification process. The reformulation of draft article 10 appeared to address concerns previously expressed about the clarity of the separability provisions.

11. **Ms. Escobar** (El Salvador) said that her delegation, also supported the two-step approach, which would make it possible to give due recognition to the importance of the law of transboundary aquifers, while leaving for a later stage the consideration of a possible convention based on the draft articles.

12. With regard to the draft articles on the effects of armed conflicts on treaties, her delegation had noted with satisfaction that substantial progress had been made in elucidating various legal issues, particularly relating to the termination or suspension of treaties, separability of treaty provisions, resumption of suspended treaties and the status of third States as neutrals. In draft article 4, it should be clearly stated that the indicia listed in subparagraph 4 (b) were not to be seen as being exhaustive. That point was made in the commentary, but it was not evident from the draft article itself.

13. With respect to draft article 15, while it was true that the Charter of the United Nations and General Assembly resolution 3314 (XXIX) currently provided the only widely accepted definition of the term "aggression", the possibility that other definitions might emerge should be considered, particularly in the light of the work of the Special Working Group of the Assembly of States Parties to the Rome Statute of the International Criminal Court on the Crime of Aggression. Regarding the list of categories of treaties referred to in draft article 5, although it was only indicative, her delegation considered it to be very useful, as it provided a good basis for determining the types of treaties that would continue in operation during armed conflict.

14. **Mr. Moreno Zapata** (Bolivarian Republic of Venezuela), referring first to the topic of shared natural resources, said that freshwater, as a life-supporting natural resource which was indispensable for economic development, must be used, conserved, managed and

protected within a framework permitting sustainable development. Since 97 per cent of readily available freshwater was stored underground, its proper management in order to halt over-extraction and pollution, was urgently required.

15. The Commission's adoption of 19 draft articles on the law of transboundary aquifers reflected the need to regulate the exploitation, use, conservation, management and protection of that resource at the international level. Notwithstanding the wording of the third preambular paragraph, it was necessary to remember in the context of draft article 3 that national sovereignty over natural resources must be exercised in the interests of national development and public well-being, as an essential element of the right to development. In view of the relationship between draft article 20 and questions concerning final form, the decision to omit that draft article had been judicious. With regard to the precedence of the draft articles over the 1977 Convention on the Law of the Non-navigational Uses of International Watercourses, it would be necessary to scrutinize the actual relationship between the draft articles and existing or future bilateral and regional agreements, as well as the question of dispute settlement, the latter aspect being independent of the former and of the Commission's recommendations to the General Assembly concerning the two-step approach to the draft articles.

16. **Ms. Ruiz Cerutti** (Argentina), referring first to chapter XII of the Commission's report, said that the round tables organized to celebrate the Commission's sixtieth anniversary had enabled legal advisers, other international law experts and former and current members of the Commission to hold a very rich and enlightening debate on practical issues related to the Commission's cooperation with Member States on the progressive development and codification of international law. It would therefore be advisable to hold that kind of meeting more often, at least at five-yearly intervals.

17. Argentina had marked that important anniversary by organizing activities highlighting the Commission's work. The Argentine Council for International Relations and the Argentine Water Resources Institute had organized a seminar on the integrated management of transboundary aquifers. The Council had also issued a publication analysing the topics on the Commission's current agenda, which had been presented at a public meeting of the Council.

18. Her delegation welcomed the Commission's decision to follow the recommendations of the Working Group on the Long-term Programme of Work, and to introduce the topics "Treaties over time" and "The most-favoured-nation clause" into its programme of work.

19. Turning to chapter IV of the Commission's report, on the topic of shared natural resources, she commended the Commission on its completion of 19 draft articles on the law of transboundary aquifers. By seeking expert advice, the Commission had gained a better understanding of the nature and functioning of aquifers, including the extensive system of the Guarani Aquifer situated within the sovereign jurisdictions of Argentina, Brazil, Paraguay and Uruguay. The draft articles were clear, objective and balanced and the commentaries to them were useful.

20. Her delegation endorsed the Commission's approach, namely, to formulate general policy rules on the subject, and its recommendation as to the General Assembly's action on the draft articles. It likewise supported the inclusion in draft article 3 of the principle that each aquifer State had sovereignty over the portion of a transboundary aquifer or aquifer system located within its territory, since that provision confirmed the fact that aquifers and their resources belonged to the States in which they were located, without prejudice to all aquifer States' obligation to ensure their rational utilization and conservation.

21. Draft article 12 dealt with a crucial aspect, namely, the prevention, reduction and control of pollution. It was right to adopt a precautionary approach in view of the lack of knowledge about some aquifers or aquifer systems and of their tremendous vulnerability to pollution. While it would have been preferable to refer to the "precautionary principle", she concurred with the view expressed in the commentary to that article that the two concepts led to similar results in practice when applied in good faith.

22. With reference to chapter IV, devoted to the effects of armed conflicts on treaties, she announced that Argentina would submit written comments on the European Commission's observations contained in document A/CN.4/592. Any study of State practice with respect to armed conflicts must be based on consultations with Governments. When that practice necessarily involved two or more States, as it obviously did in the sphere of treaty law, observations

were useful only if they were endorsed by all the States concerned and therefore ensured the impartiality of the information submitted.

23. Any examination of the effects of armed conflicts on the termination or suspension of treaties must make it clear which obligations remained in force during and after situations of armed conflict. Such an examination must be differentiated from the case where, on signing a treaty, the parties had recognized de facto or de jure situations whose nature and content made them unlikely to be affected by an armed conflict. The application of the principle of good faith required that the recognition of that sort of situation could not in any way be affected by an armed conflict. One example, in that respect was the recognition of the existence of a dispute and of its characteristics by a State party to that dispute. The continued operation of treaties was in fact a basic principle established in draft article 3.

24. The Commission should pursue its approach to the law of treaties in the light of the ban on the threat or use of force laid down in the Charter of the United Nations.

25. **Ms. Hamed** (Australia) said that, although shared water resources were of critical significance for many countries and although the development of cooperative legal frameworks was the best means of ensuring the proper management of transboundary aquifers, whether the provision of such frameworks could best be achieved through a global instrument or context-specific regional and local agreements was a matter which had to be decided by the States concerned.

26. The Commission's decision to treat the subject of transboundary aquifers independently of its consideration of shared oil and gas resources was welcome, because the use of such resources was not suited to a "one-size-fits-all" solution such as a global treaty. The codification and progressive development of general principles of international law should be approached with caution when fundamental bilateral interests were at stake. The management and exploitation of shared oil and gas reserves was essentially the concern of the particular States involved, which were best able to negotiate agreements reflecting their sovereign rights. The complexity of equitable agreements for the joint development of shared oil and gas resources, such as those which Australia had successfully concluded, bore testimony to the unique challenges arising in respect of each oil or gas deposit. It was therefore imperative that States had the flexibility to create cooperative frameworks on a case-by-case basis.

27. For that reason, it was questionable whether the topic was appropriate for the Commission to consider; if it did so, however, it should abstain from deliberating matters relating to offshore boundary delimitation, since the 1982 United Nations Convention on the Law of the Sea left no doubt that maritime delimitation was a matter for the States concerned. In areas where States had yet to resolve maritime claims, the question whether oil and gas reserves were even shared was inextricably linked to the resolution of such claims. In addition, once delimitation agreements were in place, they often contained a unitization clause providing for the joint exploitation of oil and gas deposits straddling the agreed boundary. Those bilateral mechanisms represented the best way for States to manage shared oil and gas reserves.

28. As for the Commission's work on the effects of armed conflicts on treaties, the request to States to provide comments and observations on the draft articles would provide an opportunity to explore in more detail the complex and challenging issues arising in that context.

29. **Mr. Horváth** (Hungary) said that, in view of the resounding success of the event to celebrate the Commission's sixtieth anniversary, it would be a good idea to organize that kind of meeting on a regular basis. Although the two new topics suggested for inclusion in the Commission's programme of work were extremely important, it might be unwise to add to the Commission's already heavy workload.

30. Turning to the topic of shared natural resources, he announced Hungary's general approval of the set of draft articles on the law of transboundary aquifers. While it supported the Commission's recommendation that the General Assembly should take note of the draft articles and recommend to States concerned that they should make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers on the basis of the principles enunciated in those articles, it did, however, attach great importance to considering the elaboration of a convention at a later stage.

31. He reiterated his Government's proposals, as set out in document A/CN.4/595, regarding the inclusion of a provision on compensation in draft article 6 and the replacement of the term "precautionary approach"

with "precautionary principle" in draft article 12. He was pleased to note the Commission's acceptance of Hungary's proposed amendments to the definition of "recharge zone" and "discharge zone" in draft article 2, paragraphs (g) and (h).

32. Referring to the draft articles on the effects of armed conflicts on treaties, he agreed that the definition of "armed conflict" in draft article 2 should also cover internal armed conflicts in view of their deplorable frequency and intensity. The term "state of war" was, however, somewhat outmoded and should be replaced with the expression "state of belligerency", which would be more in line with the provisions of the Charter of the United Nations and the latest developments in international humanitarian law. It should also be noted in that connection that article 73 of the 1969 Vienna Convention on the Law of Treaties referred to "the outbreak of hostilities between States".

33. The list of categories of treaties which would continue in operation during armed conflicts was so important that it should have been placed in draft article 5 itself and not in the annex. The list should also include treaties embodying *jus cogens*. The current formulation of draft article 8, on notification of termination, withdrawal or suspension, was acceptable. The splitting and further elaboration of former draft article 11 into the current draft articles 13 and 15 provided a balanced approach, on the one hand, to a State's right to terminate, withdraw from or suspend a treaty in exercise of its right of self-defence and, on the other, to the prohibition of a State from taking any of those actions in order to benefit from an act of aggression.

34. **Ms. Orina** (Kenya) said the draft articles on shared natural resources formed a basis for the guidance of States in the utilization of their shared resources. States were entitled to use water resources in their territory as long as they did not cause significant harm to neighbouring and other States. She preferred the term "transboundary" to "shared" to denote the natural resources concerned. Noting the two-step approach adopted by the Commission and its views on the relationship of the draft articles with other agreements and with dispute settlement, she welcomed its decision to consider at a later stage the elaboration of a convention on the basis of the draft articles. Her country continued to support the adoption of an international legal instrument to guide the use, allocation, preservation and management of transboundary aquifers or aquifer systems. Negotiations were under way in her region to speed up joint projects among riparian States to govern shared water resources. For Kenya, such cooperative efforts were an important means of achieving sustainable development through equitable utilization of common water resources, and also a means of bringing forward plans to prevent significant harm to other riparian States. Cooperation of that kind would be improved by an international convention.

35. She was concerned that, in its current wording, draft article 9 might prove too flexible and be interpreted as an "opt out" clause. She welcomed the provisions in draft article 16 for technical cooperation with developing States. The historical background should be borne in mind when seeking to develop an appropriate international legal framework for shared water resources.

36. Turning to the effects of armed conflicts on treaties, she welcomed the finalization of draft article 4, which now reflected properly the spirit of the Vienna Convention on the Law of Treaties. Her country took the view that treaties remained in force despite the outbreak of war, thus establishing the basic principle of legal stability and continuity. The capacity of States to conclude agreements was not diminished during an armed conflict.

37. **Mr. Kessel** (Canada), speaking on the topic of shared natural resources, said that his delegation's position was influenced by the fact that it shared an international land boundary only with the United States of America, so that for Canada all issues involving transboundary waters were exclusively bilateral and were primarily governed by the International Boundary Waters Treaty of 1909 and the Great Lakes Water Quality Agreement of 1978 as amended in 1987. The two agreements were interconnected through the International Joint Commission, a bilateral institution with responsibilities under both. Although the International Boundary Waters Treaty had no explicit provisions dealing with groundwater, the International Joint Commission had shown concern for groundwater pollution, and the 1987 amendment to the Great Lakes Water Quality Agreement included an annex addressing pollution to the Great Lakes from contaminated groundwater. Furthermore, a recent agreement on diversions out of the Great Lakes Basin included consideration of groundwater use and quality.

38. Since those instruments effectively covered all groundwater issues between Canada and its neighbour, Canada might find it problematic to participate in a model or framework convention on transboundary groundwaters. However, his delegation would be prepared to support consideration of the draft articles as a set of model principles and would encourage the Commission to work on developing a database on the issues, problems and modes of approach to enhancing protection and sustainable use of groundwaters. Canada itself had hosted a workshop on transboundary aquifers in the Americas, held in Montreal in September 2007.

39. His delegation continued to support separate treatment of the law on transboundary groundwaters and issues concerning oil and gas and welcomed the preparation of a questionnaire on State practice regarding oil and gas. The oil and gas issue was essentially bilateral and highly technical, and it encompassed diverse regional situations. It should be resolved by negotiation between the States involved. His delegation was not convinced of the need for the Commission to develop universal rules, model agreements or draft articles on the topic and would be concerned if the Commission broadened the topic to include matters relating to offshore boundary delimitation. It could be useful, however, for the Commission to outline common principles and features, best practices and lessons learned through a review of State practice that could guide States in negotiating agreements on partition of oil and gas deposits.

40. **Ms. Dascalopoulou-Livada** (Greece) said that the Commission had had a very productive session in its sixtieth anniversary year: all the topics on its agenda had progressed significantly, and promising new topics which her delegation supported, had been proposed.

41. At a time of unprecedented environmental challenges, when global warming and scarcity of water resources had become major issues of concern, the Commission's completion of the draft articles on the law of transboundary aquifers was proof of its foresight and constituted a major contribution to that rapidly evolving field of international law. The draft articles and commentary would provide necessary guidance to lawmakers in drawing up bilateral or regional legal instruments. Her delegation hoped that they would constitute the basis for the elaboration of a global convention, and it fully supported the two-step approach recommended by the Commission.

42. The draft articles struck the right balance between the sovereign rights of each aquifer State, on the one hand, and the need to take into account the concerns of other aquifer States and the preservation of aquifers as important components of ecosystems, on the other. The principles of equitable and reasonable utilization, cooperation among aquifer States and obligation not to cause significant harm had been incorporated in valuable provisions of the draft articles, although the threshold of "significant harm" was unjustifiably high. The consistency of those principles with the principles governing the use of transboundary rivers and lakes contributed to a coherent approach to water issues in international law. The inclusion of recharge and discharge zones of aquifers in the scope of the draft articles responded to the need for holistic treatment of the question.

43. Her delegation supported the Commission's decision to omit the proposed draft article 20, on the relationship between the draft articles and other instruments, pending a decision on the final form of the draft articles. The issue involved complex policy choices, in particular regarding the matter of precedence between the draft articles and the Convention on the Law of the Non-navigational Uses of International Watercourses of 1997, since groundwaters connected with surface waters were covered by both instruments. Any future attempt to establish priority rules should take into consideration a holistic approach to all the waters of a catchment area.

44. Her delegation concurred with those who thought that the Commission should not take up the question of shared oil and gas resources, because, among other reasons, in many cases it was linked with questions of maritime delimitation.

45. **Mr. Natchiappan** (India) said that the celebration of the Commission's sixtieth anniversary had provided an opportunity for a very useful interaction between the Commission and legal advisers of member States on its achievements, methods of work and future work, and his delegation supported the idea of more regular contacts. He was pleased to announce that on 2 December 2008 the Asian-African Legal Consultative Organization would be holding a one-day seminar at its headquarters in New Delhi on the topic "Sixty years of the International Law Commission". As regards the

Commission's long-term programme of work, his delegation supported the inclusion of the topics "Treaties over time" and "The most-favoured nation clause".

46. With regard to the draft articles on the law of transboundary aquifers, his delegation welcomed the recognition in draft article 3 of the sovereignty of the State over the portion of a transboundary aquifer or aquifer system located within its territory and the listing in draft article 5 of the factors relevant in determining equitable and reasonable utilization of the aquifer. The draft articles dealt with complex issues the implications of which were not yet fully understood and on which there was inadequate State practice. Accordingly, his delegation supported the Commission's recommendation for a two-step approach, which left open for further consideration the form in which the draft articles should be adopted. The Commission had rightly refrained from formulating provisions on the relationship between the draft articles and other international agreements and on the settlement of disputes, since such provisions would become necessary only when the elaboration of a convention on the basis of the draft articles was taken up for consideration by the General Assembly. Meanwhile, the draft articles could provide a useful basis for cooperation between transboundary aquifer States.

47. With regard to the draft articles of the effects of armed conflicts on treaties, the principle enunciated in draft article 3 of the continuity of treaty relations between States in the event of an outbreak of armed conflict was essential in safeguarding the stability and certainty of treaty relations between States. Draft article 5 provided that in the case of treaties the subject matter of which involved the implication that they would continue in operation, in whole or in part, during armed conflict, the incidence of an armed conflict would not as such affect their operation; an indicative list of categories of treaties referred to in draft article 5 was provided in an annex. Although such a list might be useful, it could not be exhaustive; it would be more useful if the Commission could enumerate the factors that might lead to the conclusion that a treaty or some of its provisions should continue (or be suspended or terminated) in the event of armed conflict. His delegation would be submitting more detailed comments on the draft articles in writing.

48. **Mr. Henczel** (Poland) said that he had been highly impressed by the format of the special commemorative meeting that had taken place in Geneva in May 2008 on the occasion of the sixtieth anniversary of the Commission. A free and very constructive and inspiring exchange of views had taken place between the members of the Commission and the legal advisers of member States and other persons engaged in the development of international law concerning the current and future work of the Commission and its cooperation with the Sixth Committee and with Governments. His delegation was convinced that the positive effects of the meeting would be of great value for the future work of both the Commission and the Committee.

49. The impressive results of the work of the Commission's sixtieth session could be seen in the draft articles adopted on the effects of armed conflicts on treaties and on the law of transboundary aquifers. His delegation considered both sets of draft articles to be highly valuable contributions to the codification and progressive development of international law; it reserved the right, however, to respond in due course to the Commission's request for comments from Governments on the draft articles on the effects of armed conflicts on treaties. For instance, his delegation was not fully convinced that the definition of "armed conflict" in draft article 2 made it clear that the scope of application of the draft articles included internal conflicts. It also had some doubts as to whether the indicative list of categories of treaties in the annex should be included in the draft articles.

50. With regard to the law of transboundary aquifers, his delegation was of the opinion that the rules contained in the draft articles should in the near future be given the force of treaty obligations in order to strengthen their impact on the protection of water resources for all humanity, which was an issue of growing importance. His delegation was also in favour of the Commission's continuing its work on shared natural resources, including resources other than groundwaters, such as oil and gas.

51. **Mr. Duan** Jielong (China), commenting on the topic of shared natural resources, said that the protection and reasonable exploitation and utilization of aquifers was of great significance to every State. He welcomed the results of the Commission's work on the topic, noting with appreciation that it had organized

many briefings by experts on groundwaters in order to obtain technical information about aquifers.

52. The draft articles were, on the whole, balanced. They established the sovereignty of each aquifer State over the portion of a transboundary aquifer located within its territory and laid down the principle of equitable and reasonable utilization, the obligation not to cause significant harm and the general obligation to cooperate, envisaging a mechanism for such cooperation. Since the draft was largely a product of the progressive development of international law rather than a codification of customary law, some of its provisions were not based on international practice. That was especially true of the provisions for strengthening the obligations of non-aquifer States, and of the mechanism for international cooperation for joint protection and utilization of transboundary aquifers. That mechanism would itself be significantly affected by the different characteristics of various aquifer systems, the different needs of aquifer States in protecting and utilizing their aquifers, and the relations between aquifer States. More State practice was needed to ascertain whether the draft articles would succeed in progressively developing international law. The 1997 Convention on the Law of Non-navigational Uses of International Watercourses had failed to gain universal acceptance partly because it did not pay sufficient attention to State practice. States needed time to study the draft articles before deciding how to apply them at national or regional level. It was therefore premature to consider elaborating an international convention on the subject.

53. The draft articles on effects of armed conflicts on treaties properly reflected the principle that an armed conflict did not necessarily terminate or suspend treaty relations. The definition of armed conflict in draft article 2 drew no distinction between international and internal armed conflicts, although the latter could also affect the operation of treaties. Internal conflicts ought to be included in the draft, even though they were explicitly excluded from the scope of the Vienna Convention on the Law of Treaties by virtue of its article 73. The question of whether there was anything unique in the nature of either internal or international armed conflicts in respect of the rules in the draft articles called for further study, as did State practice in the matter.

54. The list to be annexed by way of illustration to draft article 5 should be regarded as merely indicative, and not as suggesting that the kinds of treaties mentioned were never affected by armed conflict. The termination, withdrawal from or suspension of such treaties as a result of armed conflict would have to be evaluated by the Commission in conjunction with the provisions of other draft articles, especially article 4.

55. Draft article 8, on notification, applied only to a State engaged in armed conflict intending to terminate or withdraw from a treaty, although draft article 3 would also apply to the operation of treaties between a State party to the conflict and a third State. The Commission should therefore consider including an obligation to notify in respect of a third State intending to terminate or withdraw from a treaty as a result of armed conflict.

56. He queried whether draft article 11 was too rigid. The effect of paragraph (a) would be to prevent a State from terminating, withdrawing from or suspending the operation of a treaty even if the armed conflict had developed in a direction not anticipated at the outset. It was also necessary to clarify the relationship between draft articles 11 and 17.

57. While endorsing the policy consideration in draft article 15, he noted that if an aggressor State withdrew from a treaty or suspended its application in accordance with the provisions of that treaty, a conflict would arise between article 15 and the relevant provisions of the treaty in question. That issue too had to be clarified.

The meeting rose at 11.50 a.m.